

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:15CR65
(Judge Keeley)

HARVEY HIGGS,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY IN
FELONY CASE (DKT. NO. 26) AND SCHEDULING SENTENCING HEARING**

On October 19, 2015, the defendant, Harvey Higgs ("Higgs"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of GUILTY to Count Three of the Indictment. Higgs stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Higgs's statements during the plea hearing and the testimony of Officer Mark Trump, the magistrate judge found that Higgs was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges

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against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On October 20, 2015, the magistrate judge entered a Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 26) finding a factual basis for the plea and recommended that this Court accept Higgs' plea of guilty to Count Three of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Harvey Higgs' guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count Three of the Indictment.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence report prepared in this matter.

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Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. The Probation Officer shall undertake a presentence investigation of **HARVEY HIGGS**, and prepare a presentence report for the Court;

2. The Government and Higgs are to provide their versions of the offense to the probation officer by **November 19, 2015**;

3. The presentence report is to be disclosed to Higgs, defense counsel, and the United States on or before **January 4, 2016**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **January 18, 2016**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **February 1, 2016**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the

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factual basis from the statements or motions, on or before
February 15, 2016.

The magistrate judge remanded Higgs to the custody of the
United States Marshal Service.

The Court will conduct the sentencing hearing for the
defendant on **Wednesday, February 24, 2016 at 11:30 A.M.** at the
Clarksburg, West Virginia point of holding court.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to
counsel of record, the defendant, and all appropriate agencies.

DATED: November 5, 2015

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE